

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 30460 (N.D.).

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

Under section 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

2. Oil and Gas Leases: Discretion to Lease -- Wildlife Refuges and Projects: Generally

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under section 17 of the Mineral Leasing Act of 1920, as amended.

3. Oil and Gas Leases: Discretion to Lease -- Withdrawals and Reservation: Generally

The Secretary's authority to withdraw public lands is separate from, and in addition to, the Secretary's discretionary authority under section 17 of the Mineral Leasing Act of 1920, as amended. Therefore, public lands which are described in a public land order as not withdrawn

from leasing under the mineral leasing laws remain subject to an exercise of the Secretary's discretion under section 17 of the Mineral Leasing Act of 1920, as amended.

4. Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Generally

"Waterfowl production areas" are within the meaning of "wildlife refuge lands" in 43 CFR 3101.3-3(a) and, therefore, are subject to the prohibition against oil and gas leasing (except where drainage is involved) contained in 43 CFR 3101.3-3(a)(1).

APPEARANCES: T. R. Young, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On October 17, 1974, appellant T. R. Young, Jr., submitted an offer for an oil and gas lease of lots 1, 2, and 4, E 1/2 W 1/4, sec. 19, T. 152 N., R. 73 W., Fifth Principal Meridian, North Dakota. The Montana State Office, Bureau of Land Management (BLM), rejected this offer on January 9, 1975, from which decision this appeal is taken.

The BLM Office decision was based on the fact that the lands are among those withdrawn for "waterfowl production areas" by P.L.O. 4399, 33 F.R. 5420 (April 5, 1968). The Fish and Wildlife Service (FWS) advised BLM that "waterfowl production areas" are part of the "National Wildlife Refuge System." FWS indicated that as part of this System, the lands fall within the prohibition on leasing set forth in 43 CFR 3101.3-3(a)(1). FWS further advised BLM that it opposes all oil and gas leasing, except in cases of drainage, because it is "not compatible with primary purposes of acquiring waterfowl habitat."

Appellant rests his argument on the fact that P.L.O. 4399, supra, did not withdraw these lands from oil and gas leasing and he asserts that no justifiable reason was given for rejecting his offer.

[1, 2] Under the provisions of the Mineral Leasing Act of 1920, and amendments thereto, 30 U.S.C. § 181 et seq. (1970), public lands are available for leasing at the Secretary's discretion. Section 17 of the Act provides that lands subject to disposition under the Act which are known or believed to contain oil or gas

deposits "may be leased by the Secretary." (Emphasis added) 30 U.S.C. § 226(a) (1970). The Act requires that if a lease is issued, it must go to the first qualified applicant, but "it left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-5 (D.C. Cir. 1960); E. L. Lockhart, 12 IBLA 250 (1973). Such discretion may be exercised for conservation, wildlife protection, and other purposes in the public interest. Id. The general prohibition against oil and gas leasing contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under section 17 of the Act. Richard K. Todd, 68 I.D. 291, 296 (1961), aff'd sub nom., Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); George N. Keyston, Jr., Newton H. Neustadter, Jr., A-28350, A-28528 (Aug. 7, 1962).

[3] The authority of the Secretary to withdraw these public lands was recited in P.L.O. 4399 to be Exec. Order No. 10355, 17 F.R. 4831 (May 26, 1952). This withdrawal authority is separate from, and in addition to, the Secretary's discretionary authority under section 17, supra, to refuse to accept an oil and gas lease offer. Richard K. Todd, supra at 293-6; Paul Gordon, 70 I.D. 225, 227 (1963); Gregory Salinas, A-28802, A-29302 (Sept. 25, 1962).

We are presented in this case with an exercise by the Secretary of the discretionary and withdrawal authorities with respect to the same tract of land. In P.L.O. 4399 the Secretary exercised his withdrawal authority as follows:

Subject to valid existing rights, the following described lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, for management in connection with the waterfowl production area program authorized by the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718), as amended by the Act of August 1, 1958 (72 Stat. 486, 487; 16 U.S.C. 718d(b), (c)) * * *.

The appellant is correct, therefore, in his contention that the lands in issue here have not been "withdrawn" from oil and gas leasing. However, P.L.O. 4399 does not constitute an authorization for the acceptance of oil and gas lease offers. The Secretary may still exercise his discretionary authority under section 17 of the Mineral Leasing Act, supra, not to accept such offers.

As we stated above, 43 CFR 3101.3-3 is an exercise of the Secretary's discretionary authority under section 17, supra. At 43 CFR 3101.3-3(a)(1), the Secretary has declared:

No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. 1/

Therefore, if, as FWS advised BLM, "waterfowl production areas" constitute "wildlife refuge lands," the lands described in P.L.O. 4399 are not available for oil and gas leasing unless there is drainage, in which case, competitive bidding would be required. 43 CFR 3101.3-1.

[4] "Wildlife refuge lands" are defined at 43 CFR 3101.3-3(a) as those lands "embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area." "Waterfowl production areas," the acquisition of which is authorized at 16 U.S.C. § 718d(b)(c) (1970), are included within the definition of the "National Wildlife Refuge System" at 16 U.S.C. § 715(a) (1970). 2/ "Waterfowl production areas" are also included within those parts of the "National Wildlife Refuge System" defined as "wildlife refuge areas" at 50 CFR 25.1. 3/ Since "wildlife refuge areas" are "dedicated to wildlife found thereon and for the restoration, preservation, development and management of wildlife habitat," 4/ in the absence of any countervailing regulation, "waterfowl production areas" fall within the prohibition of 43 CFR 3101.3-3(a)(1). Pursuant to that regulation, appellant's offer cannot be accepted.

1/ 43 CFR 3101.3-1 allows competitive leasing on lands described in 43 CFR 3101.3-3 provided that the U.S. Geological Survey determines that the lands are subject to drainage. No such determination has been made concerning the lands in issue here. 2/ "The National Wildlife Refuge System (hereafter referred to as the 'System') includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order." This definition is repeated at 50 CFR 25.1.

3/ "'Wildlife refuge area' means any area of the National Wildlife Refuge System except wildlife management areas."

4/ 50 CFR 25.2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

